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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SANTA CLARA VALLEY HOUSING
GROUP, INC. and KRISTEN M. BOWES,

Plaintiffs,

v.

UNITED STATES OF AMERICA

Defendant.

CASE NO. 08-cv-05097-LHK

JOINT STIPULATION TO EXTEND
NON-EXPERT DISCOVERY CUTOFF
FOR DISCOVERY TAKEN PURSUANT
TO ANY MOTIONS TO COMPEL AND
EXPERT DISCOVERY CUTOFF,
DEADLINE TO FILE DISPOSITIVE
MOTIONS, AND ~~PROPOSED~~ ORDER

SANTA CLARA VALLEY HOUSING GROUP, INC. ("Santa Clara"), and KRISTEN M.

1 BOWES (“Bowes”) (collectively referred to as “Plaintiffs”) and the UNITED STATES OF AMERICA
2 (“United States”), by and through their attorneys, in light of unavoidable delays, hereby request that the
3 deadline to conduct expert discovery and to file dispositive motions be extended by two weeks as set
4 forth below.

5 The parties are not seeking by this stipulation to postpone or delay either the Pretrial Conference
6 date, currently set for May 25, 2011, or the trial date, currently set for June 27, 2011. This Stipulation
7 also does not affect the Case Management Conference scheduled for February 16, 2011.

8 In support of this Stipulation, the parties state as follows:

9
10 1. During the month of December, the parties engaged in significant expert discovery
11 throughout the United States.

12 2. On December 1, 2010, the United States deposed Plaintiffs’ expert Howard Gastwirth
13 in Los Angeles.

14 3. On December 3, 2010, the parties simultaneously responded to their respective requests
15 for production directed to the rebuttal experts and produced documents.

16 4. On December 8, 2010, Plaintiffs deposed the United States’ expert Ronald Hendricks in
17 Sacramento.

18 5. On December 9, 2010, the United States deposed Plaintiffs’ expert and rebuttal expert
19 Robert Edelstein in Los Angeles. The United States was unable to complete this deposition in the one
20 day scheduled and a continuation of the deposition has been set for January 24, 2011.

21 6. On December 10, 2010, the United States deposed Plaintiffs’ expert and rebuttal expert
22 Linda Burke in Los Angeles.

23 7. On December 13-14, 2010, the United States deposed Plaintiffs’ expert and rebuttal
24 expert, Daniel McConaughy, in Los Angeles.

25 8. On December 16-17, 2010, Plaintiffs deposed the United States’ expert and rebuttal
26 expert Thomas Lys in Chicago. Plaintiffs were unable to complete this deposition in the time scheduled.
27 The parties sought to reschedule the continued deposition of Dr. Lys within the expert discovery period.
28 However, due to the holidays, Dr. Lys’ extensive travel schedule, other scheduled depositions and a

1 previously scheduled trip outside the United States from January 12-31 by one of Plaintiffs' lead
2 counsel, the parties have been unable to schedule the continued deposition of Dr. Lys by January 31,
3 2011. A deposition has been tentatively scheduled for February 8, 2011 in Chicago.

4 9. On January 5, 2011, Plaintiffs deposed the United States' rebuttal expert Karl Case in
5 Boston.

6 10. A deposition of the United States' rebuttal expert David W. LaRue has not been
7 scheduled at this time. Mr. LaRue's deposition would be taken in Denver.

8 11. Accordingly, in light of the number and location of experts and their availability for
9 depositions, as well as the complex nature of opinions expressed, the parties request that the close of
10 expert discovery, currently set for January 31, 2011, be extended to February 14, 2011.

11 12. With respect to fact discovery, two witnesses remain to be deposed. The Court granted
12 the parties leave to complete the depositions of Whitehead and Krutilla during the expert discovery
13 period ending January 31, 2010. The depositions of these two witnesses are tentatively scheduled for
14 the last week of January 2011.

15 13. Additional delays have been caused by the refusal of former KPMG employees to testify
16 in this matter. Four of the United States' deponents asserted their Fifth Amendment privilege during
17 their deposition and refused to answer substantive questions from either party. Plaintiffs do not believe
18 these third-party witnesses have valid Fifth Amendment claims and have filed a motion to compel in this
19 district and the three separate motions in United States District Court for the Central District of
20 California.

21 14. On October 26, 2010, Plaintiffs filed with Magistrate Judge Lloyd, the magistrate
22 assigned to this case, a Motion to Compel with a proposed order directing third-party witness Douglas
23 Duncan to testify.

24 15. On November 2, 2010, Plaintiffs filed a Motion to Compel with respect to the remaining
25 three third-party witnesses in the U.S. District Court for the Central District of California, the court that
26 has jurisdiction over the deponents. A hearing was set for December 8, 2010, however, the court vacated
27 the hearing and denied the Motion to Compel without prejudice for failure of the parties to file a joint
28 stipulation as required under the local rules.

1 16. On November 29, 2010, the parties and counsel for each of the deponents held the
2 requisite meet & confer as required under the local rules for the Central District. Since the meet &
3 confer, the parties and counsel for each of the deponents have been working on the joint stipulations, as
4 required under the Central District's local rules, to be filed with the Motions to Compel. The completion
5 of the required joint stipulations was protracted due both to the holidays and the need to obtain input
6 from the separate counsel for each deponent.

7 17. On December 7, 2010, a hearing on Plaintiff's Motion to Compel was heard before
8 Magistrate Judge Lloyd. On December 14, 2010, Magistrate Judge Lloyd issued an Order Denying
9 Plaintiffs' Motion to Compel third-party Douglas Duncan to Testify and, on December 23, 2010,
10 Plaintiffs moved for relief from the Order.

11 18. On December 29, 2010, Plaintiffs filed a Motion to Compel Third Party Dale Affonso
12 to Testify in the U.S. District Court for the Central District of California.

13 19. On December 30, 2010, Plaintiffs filed a Motion to Compel Third Party Andrew Atkin
14 to Testify in the U.S. District Court for the Central District of California.

15 20. On January 5, 2011, Plaintiffs filed a Motion to Compel Third Party Larry Manth to
16 Testify in the U.S. District Court for the Central District of California.

17 21. The U.S. District Court for the Central District of California has yet to schedule a hearing
18 for any of the motions to compel before it.

19 22. On January 5, 2011, this Court denied Plaintiffs' request for relief from an Order by
20 Magistrate Judge Lloyd denying Plaintiffs' Motion to Compel Third Party Douglas Duncan to testify.

21 23. As the parties will be preparing and conducting at least four depositions (pending
22 resolution of Plaintiffs' Motions to Compel) of both fact and expert witnesses during January, elements
23 from these depositions may be used by the parties in any dispositive motions filed. In addition, it is
24 anticipated that the hearings on Plaintiffs' Motions to Compel filed in the U.S. District Court for the
25 Central District of California will be in January or early February. Thus, the parties request that the
26 deadlines to file dispositive motions currently set for January 31, 2011, be extended to February 14,
27 2011, and that the deadlines to file oppositions and replies to the oppositions be correspondingly
28 extended two weeks to March 14, 2011 and April 14, 2011, respectively. As indicated in the Joint Case

1 Management Statement, this is a case of first impression with respect to the tax merits of the SC2
2 strategy. Thus, the parties believe this extended briefing schedule is warranted.

3 24. The parties have proposed that the hearing on dispositive motions be correspondingly
4 moved two weeks from April 7, 2011 to April 21, 2011. However, the parties are flexible as to when
5 the Court would want to hear the dispositive motions.

6 25. The parties also request that because this action arises out of a complicated tax transaction
7 the page limitations with respect to motions under the Civil Local Rules of this Court be increased from
8 25 pages to 35 pages for dispositive motions and oppositions to dispositive motions, and from 15 pages
9 to 25 pages for replies to oppositions.

10 Therefore, the parties hereby stipulate that the Case Schedule be modified as follows:

| | | |
|----|---|--------------------------|
| 11 | Close of Expert Discovery: | February 14, 2011 |
| 12 | Non-Expert Discovery Cutoff for discovery taken pursuant | February 14, 2011 |
| 13 | to any Motions to Compel: | |
| 14 | Deadline to file Dispositive Motions (not to exceed 35 pages | February 14, 2011 |
| 15 | in length): | |
| 16 | Deadline to file Oppositions to Dispositive Motions (not to | March 14, 2011 |
| 17 | exceed 35 pages in length): | |
| 18 | Deadline to file Reply to Opposition to Dispositive Motions | April 14, 2011 |
| 19 | (not to exceed 25 pages in length): | |
| 20 | Hearing on Dispositive Motions: | April 21, 2011 |

21 DATED: January 6, 2011

HOCHMAN, SALKIN, RETTIG, TOSCHER & PEREZ, P.C.

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28

1 DATED: January 6, 2011

UNITED STATES DEPARTMENT OF JUSTICE

2
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9 *Attorneys for the UNITED STATES OF AMERICA*

10
11 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

12
13
14 Dated this 10th day of _____ January, 2011


HON. LUCY H. KOH

UNITED STATES DISTRICT JUDGE